



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

March 16, 2016

Dr. Frank Batten
Kennel Owner
Rolesville Pet Resort & Spa
312 South Main Street
Rolesville, NC 27517

NOTICE OF CIVIL PENALTY

**Re: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF TITLE 02 N. C.
ADMINISTRATIVE CODE, CHAPTER 52J, SECTIONS .0204(d) and (e) and .210(d).**

AWS-CP-2016-2

**Facility: Rolesville Pet Resort & Spa
License No. 11058**

Dear Dr. Batten:

Pursuant to N. C. General Statute § 19A-40 I am issuing this notice to you that Rolesville Pet Resort & Spa is hereby assessed a civil penalty of \$1,400.00 as detailed in the enclosed Notice of Violations. This amount is based on the degree and extent of the harm caused by the violation and is consistent with those previously issued by AWS for similar violations.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N. C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to N. C. General Statute § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the civil penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. Patricia Norris
Director, Animal Welfare Section
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. General Statute § 150B-23. The petition must be accompanied by a filing fee of twenty dollars (\$20.00) payable to the N.C. Office of Administrative Hearings ("OAH"). Should you have any questions about what the fee would be for your case, please contact the OAH Clerk's Office at 919-431-3000. Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone at 919-431-3000. You must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlabse
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Norris', with a stylized flourish at the end.

Patricia Norris, DVM MS
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, State Veterinarian
Tina Hlabse, General Counsel, NCDA&CS
Joe Reardon, Assistant Commissioner, NCDA&CS
Christopher R. McLennan, Assistant Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT
OF AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION
ANIMAL WELFARE SECTION

IN THE MATTER OF

ROLESVILLE PET RESORT & SPA
BOARDING KENNEL

) NOTICE OF VIOLATIONS
) ASSESSMENT OF CIVIL PENALTY
) FOR VIOLATIONS OF 02 NCAC
) 52J .0204(d) and (e) and .0210 (d)

Acting pursuant to N.C. Gen. Stat. § 19A-40, Dr. Patricia Norris, Director, Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") makes the following:

FINDINGS OF FACT

1. At all times pertinent to this matter Rolesville Pet Resort & Spa (License No. 11058) ("the kennel") is a boarding kennel licensed pursuant to N.C. General Statute §19A-28.
2. On March 7, 2016, AWS received a complaint concerning the kennel alleging that a dog (Puffin) was killed while in the kennel's common exercise area on December 27, 2015.
2. AWS opened an investigation and on March 11, 2016, AWS Outreach Coordinator Joe Blomquist ("Coordinator Blomquist") conducted a site visit of the kennel. As part of the site visit, Coordinator Blomquist interviewed the kennel manager and reviewed the kennel records.
3. The investigation and interview revealed the following:
 - a) Puffin arrived on December 23, 2015 and was found dead by the kennel staff on December 27, 2015 in the Small Dog exercise pen;
 - b) The necropsy conducted by the NCVDLs: Rollins Lab concluded that Puffin died of wounds consistent with those from an attack from another dog;
 - c) The statements provided by the kennel from the staff members present at the time of the incident agree that the dogs were left unsupervised in the Small Dog exercise pen for a short amount of time.
 - d) The statement from one of the kennel staff members revealed that there were more than 4 dogs present in the Small Dog exercise pen at the time of the incident.
4. The review of the kennel records revealed:
 - a) On December 27, 2015, 29 dogs were boarded at the facility;
 - b) Review of the records of these 29 dogs show that 2 dogs on the premises at that time did not have current rabies vaccinations.

CONCLUSIONS

The most reasonable conclusion of this investigation is that the dog, Puffin, died as a result of trauma suffered from a dog attack during the time period the dogs were present in the Small Dog exercise pen unsupervised. Two dogs present on this date did not have valid rabies vaccinations based on the records of the kennel.

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, finds that you either by act or omission, violated the provisions the North Carolina Administrative Code 52J .0204(e) and .0210(d).

(See Appendix for text of cited General Statutes and Administrative Code)

CIVIL PENALTIES

As required by N.C. Gen. Stat. § 19A-40, in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly Rolesville Pet Resort & Spa is assessed a civil penalty for the following violations:

- 1) \$1,000.00 for violation of North Carolina Administrative Code 52J .0204(d) and (e)
- 2) \$400.00 for 2 violations of North Carolina Administrative Code 52J .0210(d)

\$1,400.00 TOTAL AMOUNT ASSESSED

3/16/2016

Date



Patricia Norris, DVM MS
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services

Appendix

RELEVANT LAWS AND REGULATIONS

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 6; 1998-215, s. 3.)

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(d) In addition to Paragraph (b) of this Rule, each dog shall be provided a minimum square footage of floor space equal to the mathematical square of the sum of the length of the dog in inches, as measured from the tip of its nose to the base of its tail, plus six inches, then divide the product by 144. The calculation is: (length of dog in inches + 6) x (length of dog in inches + 6) = required floor space in square inches. Required floor space in square inches ÷ 144 = required floor space in square feet. The calculation shall be expressed in square feet. Not more than four adult dogs shall be housed in the same primary enclosure without supervision.

(e) If more than four dogs are housed in a common area or enclosure, then there must be at least one person supervising each 10 dogs housed within each enclosure or common area.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0210 VETERINARY CARE

(d) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6. However, no shelter shall be disapproved following inspection or otherwise cited for failure to inoculate any dog or cat known to be less than 12 weeks old or until such animals have been in the shelter at least 15 days.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. March 23, 2009; January 1, 2005.